way wished to prejudge any application for reinstatement that might eventually be made we felt this was a cause in which, if he is allowed to retain his qualification as a member of the Bar in England, it was not impossible that this solicitor might one day be readmitted to practise in this Colony.

In addition to the order striking him off the roll of this Court we made an order that the costs of the Bar Committee should be paid by the respondent.

WONG YEW v. SHAIK SALLIM BIN MOHAMED BIN SALLIM BIN TALIB

[Workmen's Compensation (Williams, Commissioner) August 19, 1936]

[Singapore Workmen's Compensation. Claim 29 of 1936]

Workmen's Compensation Ordinance, 1932, s.15.

Held: following *Bargewell* v. *Daniel* [1907] 98 L.T. 265, that repairs carried out for a landlord to one of his houses are not carried out in the course of and for the purposes of his trade or business and that in such circumstances the landlord is not a "principal" under section 15 of the Workmen's Compensation Ordinance, 1932.

Oakeley (Assistant Controller of Labour) for the applicant.

Seth for the respondent.

E. B. Williams, Commissioner: The facts in this case (which is a disputed claim under the Workmen's Compensation Ordinance, 1932) insofar as it is necessary to consider them for the purposes of this judgment, are not in dispute. The respondent is an absentee landlord owning a number of houses in Singapore, including No. 137 Amoy Street. Certain repairs being required to the roof of the latter house, the respondent's agent employed the witness, Ng Cheong to do the repairs. The verbal agreement between the respondnt's agent and Ng Cheong was that Ng Cheong should find the necessary labour and that payment should be made to Ng Cheong, on the basis of the number of men employed on the work at the rate of $1 *per diem* for masons and 65 cents *per diem* for other labourers. The applicant who was represented at the hearing by Mr. Oakeley, Assistant Controller of Labour, Chinese, was one of the workmen engaged by [243] Ng [243] Cheong to work on the house. On the 27th January, 1936 he fell from the roof and was seriously injured.

At the beginning of the hearing I settled certain issues of which in view of the evidence given it is only necessary to mention two, viz.:

(a) was the applicant in the employ of the respondent?
(b) could the respondent be made liable under section 15 of the Ordinance?

Mr. Oakeley only called two witnesses, the applicant and Ng Cheong. On the first issue Mr. Oakeley had pleaded that the applicant was in the employ of the respondent but this plea was not borne out by the evidence. Both the applicant and Ng Cheong and I was able to hold without calling on the defence that there was no contractual relation between the applicant and the defendant and that as a question of fact the applicant was not in the employ of the respondent.

The second issue as to section 15 of the Ordinance was not pleaded but was raised by me without protest from the respondent's counsel, Mr. Seth.

It appeared to me clear on reading section 15 of the Ordinance that the respondent could not be held to be liable unless the work of repairing the house was being undertaken "in the course of or for the purposes of his trade or business." Now these same words "for the purposes of his trade or business" appear as part of the definition of workman in section 2 of the Ordinance exception (a) and also in paragraph (b) of section 3(2) of the Workmen's Compensation Act, 1925 (15 and 16 Geo. 5 c. 84). Under this paragraph 3(2)(b) of the English Act in *Bargewell* v. *Daniel*, [1907] 98 L.T. 257, where a widow owned a number of cottages and a man who was employed casually to do repairs sustained an accident, it was held that the widow was not carrying on a trade or business. I was of opinion that this case was binding on me in regard to the interpretation of the words "for the purposes of his trade or business" in section 15 of our Ordinance and I accordingly held that the repairs were not done in the course of or for the purposes of the respondent's trade or business and that respondent was not a "principal" under section 15.

I therefore dismissed the claim without prejudice to any proceedings which the applicant might see fit to take against Ng Cheong. I made no order as to costs.

Claim dismissed.

Solicitors: *Sisson & Delay.*

REX v. KHOO KEE THYE & ORS.

[A. Cr. J. (Gordon-Smith J.) August 26, 1936]

[Penang Criminal Appeal No. 13 of 1936]

Criminal Procedure Code, s.310 — Reservation of Points of Law — Ordinance No. 45 (Common Gaming Houses), s.5(c) — Selling lottery tickets.

It is usual where a plea of guilty is accepted by a Magistrate to record some information (which may or may not amount to formal evidence) to show that the punishment inflicted is deserved; at least unless in a petty or trivial case.

SPECIAL CASE.

W. C. Taylor (Deputy Public Prosecutor) for the Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Gordon-Smith J.: This was a special case stated by the Magistrate, Penang, under the provisions of section 310 of the Criminal Procedure Code, with the object of ascertaining the extent to which evidence need be taken by a lower Court when a plea of guilty has been accepted.

So far as the facts of this case are concerned I am satisfied that the four accused understood the nature and consequences of their respective pleas of guilty and intended to admit without qualification the offence charged against them.

The charge was under section 4(c) of Ordinance No. 45 (Common Gaming Houses) of having assisted in carrying on a public lottery. After the plea and conviction was recorded the Prosecuting Officer made a statement to the Court giving details of the lottery and the responsibility of the four accused in carrying it on and also put in letters signed by three of the accused relating to the sale of tickets. These letters were admitted by the accused and none of the statement was controverted by any of the accused. I am satisfied as to the correctness of the conviction, which is confirmed, but I thought that it was desirable to record formally in a written judgment an answer to the question raised.

Section 178 of the Criminal Procedure Code deals with the procedure in summary trials and paragraph (b) of such section relates specifically to recording a plea of guilty. The Magistrate must be satisfied before recording such a plea that the accused not only understands the nature of the charge and the consequences of his plea but that he also admits without qualification the offences so charged. In such case the Magistrate is fully justified in recording a conviction, but it is entirely in the discretion of the Magistrate to do so. If he decides not to accept such plea and not to convict thereon he should record his rea-
[244] [244] sons, and the trial should then proceed in the ordinary way.

It might also be noted that a plea of guilty may be withdrawn before the sentence has been passed but this, again, is only with the leave of the Magistrate, who has a discretion in the matter (*Rex* v. *Plumer*, [1902] 2 K.B. 339).

Having recorded a conviction on such a plea a Court usually requires information as to the accused's antecedents, and probably also as to the details of the offence charged. This information need not necessarily be by formal evidence. *Henry Weaver*, 1 Cr. A.R. 12. It may be only as to suspicious events. *Kate Edwards*, 3 Cr. A.R. 59.

If it is suggested that some part of the information tendered is not correct and is challenged by the accused, then the Magistrate should inquire into that part, and if necessary postpone sentence for the purpose of receiving formal proof of the disputed statement. Alternatively, the Magistrate should ignore such disputed statement, but taking care to record the fact that he does so ignore it. If the accused does not challenge the information given, then the Magistrate may take it into consideration. (*Donald Campbell*, 6 Cr. A.R. 131).

The only local case to which I have been referred is *Palan* v. *Public Prosecutor, Johore Bahru*, [1932] M.L.J. 124. In this case Murison C.J. is reported as having stated "as an Appeal Court, I think we ought to have some evidence taken by the trial Judge to indicate the nature and quality of the criminal act for which the sentence is given. Without that evidence we cannot be in a position to say whether the sentence is fair or not. It is not, in my opinion, enough for the Public Prosecutor to read to us the depositions of the Magistrate." Terrell J. agreed with the Chief Justice. In this case the accused had received a sentence of six years' for voluntarily causing grievous hurt and had pleaded guilty. There was nothing before the Appeal Court to show either the nature of the act or the previous antecedents of the accused.

Admittedly, it is a matter in the discretion of the Court, but the cases shew that it is usual, where a plea of guilty is accepted, to record some information (which may or may not amount to formal evidence) to shew that the punishment inflicted is deserved. Otherwise, there is nothing to guide a Court of Appeal in this respect, when an appeal is lodged. I am not suggesting that this course should be adopted in every case which comes before a Magistrate or District Judge, particularly in respect of petty or minor offences. But where, in what appears to be such a case, an exceptionally heavy fine is imposed or imprisonment for some considerable period is ordered without the option of a fine, then the Magistrate or District Judge should record his reasons for passing the sentence and the information placed before him, so as to shew some justification for having awarded such punishment. In the absence of such reasons and information on the record, the sentence is liable to be varied by a Court of Appeal.

HASSAN v. FOGDEN, BRISBANE & CO. LTD.

[Workmen's Compensation (Williams, Commissioner) September 15, 1936]

[Singapore Workmen's Compensation Claim 51 of 1936]

Workmen's Compensation Ordinance, (Cap. 70), s.6.

Held: that the words "fourteen days" in the explanation to section 6 of the Ordinance mean a continuous period of fourteen days.

Held further: that the words "total wages earned" in section 6(1)(c) of the Ordinance mean the amount actually payable for work performed and that these words must be interpreted without reference to section 8(4) of the Labour Ordinance (Chapter 69).

Handy (Extra Assistant Controller of Labour) for the applicant.

Vaux for the respondents.

E. B. Williams, Commissioner: In this case the applicant is a workman named Hassan who sustained a serious accident while in the employment of one Pereira. The respondents are Messrs. Fogden, Brisbane & Co., Ltd. who are admittedly the principals within the meaning of section 15 of the Workmen's Compensation Ordinance. The emplover Pereira is not a party to the proceedings though he was present at the hearing. All the facts in the case were admitted and the only point in issue between the parties was what was the monthly wage of the applicant within the meaning of section 6 of the Ordinance. It was admitted that the daily pay of the applicant was 70 cts. During the period of his employment lasting from the 3rd September to the 23rd October a period of 51 days the applicant is recorded in exhibit B, a document which is admitted to be correct by both parties, to have worked and been paid for 18 full days, 12 half days and 2 three-quarter days. On 19th days he did no work. The longest continuous period during which he did no work was 5 days.